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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 WESTERN DIVISION
22 MAGNATE INTERNATIONAL) No. CV12-09208-RGK(PLAx)
23 LIMITED, a Taiwanese company,)
24 Plaintiff,)
25 v.)
26 COSTCO WHOLESALE)
27 CORPORATION, a Washington)
28 corporation.)

29 Defendant.

30 COSTCO WHOLESALE
31 CORPORATION, a Washington
32 corporation,

33 Counter-Claimant,

34 v.

35 MAGNATE INTERNATIONAL,
36 LIMITED, a Taiwanese company,

37 Counter-Defendant.

38 STIPULATED PROTECTIVE ORDER - 1
39 CV12-09208-RGK (PLAx)

40 *Mandatory chambers (sp)*
41 *Magnate International, Inc.*
42 *NOTE CHANGES MADE BY THE COURT*
43 FOSTER PEPPER PLLC
44 1111 THIRD AVENUE, SUITE 3400
45 SEATTLE, WASHINGTON 98101-3299
46 PHONE (206) 447-4400 FAX (206) 447-9700

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3 **I. PURPOSES AND LIMITATIONS**

4 The parties, through their respective counsel, hereby stipulate to and petition
5 the Court to enter the following Stipulated Protective Order. The parties
6 acknowledge and understand that this Order does not confer blanket protection on
7 all disclosures or responses to discovery, the protection it affords from public
8 disclosure and use extends only to the limited information or items that are entitled
9 to confidential treatment under the applicable legal principles, and it does not
10 presumptively entitle parties to file confidential information under seal.
11 Nevertheless, the parties agree that good cause exists for this Order and that such
12 an order is in the best interest of both parties.

13

14 **II. GOOD CAUSE STATEMENT**

15 Discovery in this action is likely to involve production of confidential,
16 proprietary, or private information for which special protection may be warranted.
17 The parties have contractual obligations to third parties to keep certain information
18 confidential. The parties are obliged by the Federal Rules to produce certain
19 information, which is subject to contractual confidentiality obligations to third
20 parties. Failure to sufficiently protect such information will create potential
21 liability to the parties. The parties are also obliged to produce documents
22 containing confidential sales information, including without limitation pricing,
23 discount strategies and supply chain information. Public disclosure of such
24 information will result in competitive disadvantages to the parties from
competitors who learn the parties' confidential business strategies.

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26 **III. USE AT TRIAL**

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1 This Order governs the use of confidential materials at trial. All documents
2 designated as trial exhibits shall not be covered by the terms of this Order at the
3 time of trial, even if they are appropriately designated Confidential or Attorneys
4 Eyes Only, unless the party seeking to maintain the confidentiality of documents
5 makes a showing of good cause as to why the material should remain confidential
6 to the Court, in advance of trial. Notwithstanding the above, the Parties will
7 maintain as confidential, in accordance with this Order, all Confidential material
8 exchanged pursuant to this Order before and after trial.

9 **IV. CONFIDENTIAL MATERIAL**

10 Confidential material shall include the following documents and tangible
11 things produced, disclosed, or otherwise exchanged: documents subject to
12 confidentiality agreements with third parties, documents containing sales
13 information, pricing and discount strategies, documents containing or evincing
14 proprietary business methods and strategies and documents evidencing proprietary
15 design techniques.

16 1. **SCOPE**

17 The protections conferred by this agreement cover not only confidential
18 material (as defined above), but also (1) any information copied or extracted from
19 confidential material; (2) all copies, excerpts, summaries, or compilations of
20 confidential material; and (3) any testimony, conversations, or presentations by
21 parties or their counsel that might reveal confidential material.

22 However, the restrictions set forth in this Order will not apply to information
23 which is known to the receiving party or the public before the date of its
24 transmission to the receiving party, or which becomes known to the public after the
25 date of its transmission to the receiving party, provided that such information does
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1 not become publicly known by any act or omission of the receiving party, its
2 employees or agents, which would be in violation of this Order; provided, further,
3 that the provisions of this paragraph are not self-executing and may not be invoked
4 on a self-help basis. A party who contends that material designated as confidential
5 (at either level defined herein) under this Order should remain confidential shall
6 have the burden of proving that contention in any proceeding where a
7 confidentiality designation is at issue.

8 **V. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

9 **5.1 Basic Principles.**

10 A receiving party may use confidential material that is disclosed or produced
11 by another party or by a non-party in connection with this case only for
12 prosecuting, defending, or attempting to settle this litigation. Confidential material
13 may be disclosed only to the categories of persons and under the conditions
14 described in this agreement. Confidential material must be stored and maintained
15 by a receiving party at a location and in a secure manner that ensures that access is
16 limited to the persons authorized under this agreement.

17 **5.2 Disclosure of Confidential Information or Items.** Unless otherwise
18 ordered by the Court or permitted in writing by the designating party, any material
19 designated "Confidential," including copies or excerpts thereof, or analyses or
20 reports which pertain thereto, may be made available only to:

21 (a) Attorneys of record for the receiving party and their immediate
22 staff;

23 (b) Judges, Magistrates, law clerks and other clerical personnel of
24 the Court before which this action is pending;

25 (c) Independent experts whom the receiving party identifies to the
26 producing party. If the producing party has any objection to the proposed

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1 independent expert, it shall notify the receiving party in writing within ten (10)
2 days of such identification. The parties will attempt to resolve any difference
3 concerning such independent experts, but if they are unable to do so, the receiving
4 party may seek relief from the Court according to the procedure established in
5 LCR 37. No disclosure of the information shall be made to the proposed
6 independent expert until after the Court has ruled upon the issue;

7 (d) Officers and directors of the parties

8 Materials designated "Attorneys' Eyes Only" as well as any copies or
9 excerpts thereof, or analyses or reports which pertain thereto, may be made
10 available only to persons identified in Section 5.2(a) through (c) of this Order.

11 5.3 Agreement To Be Bound. Each person permitted by the parties or
12 their counsel to have access to designated information under the terms of this
13 Order shall, prior to being given such access, be provided with a copy of this Order
14 for review. Upon receiving this Order, each person shall sign an "Agreement To
15 Be Bound" (Exhibit A to this Order) indicating that he has read the Order and
16 agrees to comply with its terms, provided, however, that partners and employees of
17 counsel of record as well as officers and personnel of the Court shall be exempt
18 from the requirement to sign the Exhibit A statement.

19 5.4 Filing Confidential Material. Before filing confidential material or
20 discussing or referencing such material in court filings, the filing party shall confer
21 with the designating party to determine whether the designating party will remove
22 the confidential designation, whether the document can be redacted, or whether a
23 motion to seal or stipulation and proposed order is warranted. Local Civil Rule ~~37~~ 79-5
24 sets forth the procedures that must be followed and the standards that will be
25 applied when a party seeks permission from the court to file material under seal.
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1 Any document or evidence filed with the Court or submitted to the Judge
2 which is designated as containing "Confidential" or "Attorneys' Eyes Only"
3 information, upon ~~79-582~~ showing of good cause and according to procedures
4 established in LCR ~~37~~, will be filed in a sealed envelope or other appropriate
5 sealed container marked on the outside with the title of the action and a statement
6 substantially in the following form:

7 **"CONFIDENTIAL" [or "ATTORNEYS' EYES ONLY"]**

8 This document is subject to a PROTECTIVE ORDER issued by the Court
9 and may not be examined or copied except in compliance with that order.

10 The LCR ~~37~~ application for filing under seal shall be directed to the Judge to
11 whom the filing is directed.

12 **VI. DESIGNATING PROTECTED MATERIAL**

13 6.1 **Governing Standards.** Any information produced by any party or non-
14 party as part of discovery in this action may be designated by the producing
15 party(ies) as "Confidential" or "Attorneys' Eyes Only." A document should be
16 designated "Confidential" when it contains confidential information (as listed
17 above) that may be reviewed by a designated manager of the receiving party but
18 must be protected against disclosure to unauthorized third parties. A document
19 should be designated "Attorneys' Eyes Only" when it contains trade secrets of a
20 technical nature, such as information relating to product formulas, manufacturing
21 methods, product development plants, or confidential business information such as
22 marketing plans, customer lists, pricing plans, financial statements, supplier
23 identifiers or other information which would put the producing person or entity at a
24 competitive disadvantage if the information become known to the receiving party.

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1 6.2 Exercise of Restraint and Care in Designating Material for Protection.

2 Each party or non-party that designates information or items for protection under
3 this Order must take care to limit any such designation to specific material that
4 qualifies under the appropriate standards. The designating party must designate for
5 protection only those parts of material, documents, items, or oral or written
6 communications that qualify, so that other portions of the material, documents,
7 items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations
10 that are shown to be clearly unjustified or that have been made for an improper
11 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
12 to impose unnecessary expenses and burdens on other parties) expose the
13 designating party to sanctions.

14 Any information which is publicly available, including any information
15 which can be ascertained from examination of a product sold by any party, should
16 not be designated as “Confidential” or “Attorneys’ Eyes Only.”

17 If it comes to a designating party’s attention that information or items that it
18 designated for protection do not qualify for protection, the designating party must
19 promptly notify all other parties that it is withdrawing the mistaken designation.

20 6.3 Manner and Timing of Designations. Any party or non-party wishing
21 to invoke the confidentiality provisions of this Order as to produced things and
22 documents may designate, in writing, the things and documents (as defined in Rule
23 34 Fed. R. Civ. P. and Rule 1001 Fed. R. Evid.) or portions thereof which it
24 considers confidential at the time the things and documents are produced. Such
25 designation must be clear and unambiguous.

1 6.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the designating party's right to secure protection under this agreement for such
4 material. Upon timely correction of a designation, the receiving party must make
5 reasonable efforts to ensure that the material is treated in accordance with the
6 provisions of this agreement.

7 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 If, at any time during preparation for trial, any party believes that any other
9 party or non-party has unreasonably designated certain material as "Confidential"
10 or "Attorneys' Eyes Only," or believes that it is necessary to disclose designated
11 material to persons other than those permitted by this Order, and the producing
12 party does not agree to change the designation or to further disclosure, the
13 objecting party may make an appropriate application to this Court in accordance
14 with the procedures established in LCR 37 and upon notice to all parties and to any
15 non-party who designated the material.

16 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED
17 PRODUCED IN OTHER LITIGATION**

18 If a party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this action as
20 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," that party must:

21 (a) Promptly notify the designating party in writing and include a
22 copy of the subpoena or court order;

23 (b) Promptly notify in writing the party who caused the subpoena
24 or order to issue in the other litigation that some or all of the material covered by
25 the subpoena or order is subject to this agreement. Such notification shall include a
26 copy of this agreement; and

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(c) Cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Agreement to Be Bound" that is attached hereto as Exhibit A.

X. NON TERMINATION AND RETURN OF DOCUMENTS

Within 30 days after the termination of this action, including all appeals, each receiving party must return all confidential material, including material designated "Attorneys' Eyes Only," to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, the attorney of record may retain one (1) copy of any designated documents attached to any pleading filed with the Court.

The confidentiality obligations imposed by this Order shall remain in effect in perpetuity, to the extent permitted by the Court, or until the Court orders otherwise. Pursuant to Section IV above, no confidentiality obligations will apply to materials made public during the trial of this action. The parties agree to maintain as confidential any designated materials exchanged during preparation for trial but not made public.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED April 29, 2013.

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1 EXHIBIT A
2 AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Central District of
7 California on [date] in the case of Magnate International Limited v. Costco
8 Wholesale Corporation, No. CV12-09208-RGK(PLAx). I agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order, and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms
17 of this Stipulated

18 Protective Order, even if such enforcement proceedings occur after
19 termination of this action.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 Signature: _____

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DECLARATION OF SERVICE

I, Janelle Milodragovich, state that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty one years, I am not a party to this action, and I am competent to be a witness herein. I electronically served the foregoing on the following parties who have appeared in this action as of today's date:

- **Willmore F. Holbrow, III** – bill_holbrow@bstz.com
- **Dennis G. Martin** – dennis_martin@bstz.com

There are no other parties who have appeared in this action as of today's date that need to be served manually.

I DECLARE under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED April 24, 2013.

/s/ Janelle Milodragovich
Janelle Milodragovich

CERTIFICATE OF SERVICE - 1
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